IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 3851 of 2005

Between:

1 M.V. Subba Raju, S/o. Appala Raju, Hindu, Joint Owner of "Well Cheer Up

Bar & Restaurant" Vandita Complex, Main Resapuvanipalem, Visakhapatnam.
2 Kanddula Jagadeswaras Rao, S/o. Panajkala Narasimha Narasimha Swamy,

Hindu, Joint Owner of "Well Cheer Up Bar & Restaurant" Vandita Complex,

Main Resapuvanipalem, Visakhapatnam.
3 G.V. Rama Raju, S/o. Late Venkta Raju, Hindu, Joint Owner of "Well Cheer

Up Bar & Restaurant" Vandita Complex, Main Resapuvanipalem,
Visakhapatnam.
4 Yerakaraju Krishnam Raju, S/o. Padmaraju, Hindu, Joint Owner of "Well

Cheer Up Bar & Restaurant" Vandita Complex, Main Resapuvanipalem,
Visakhapatnam.

... PETITIONERS

AND

1 The District Collector & District Magistrate, Visakhapatnam, Visakhapatnam

District.
2 The Deputy Commissioner of Police, Visakhapatnam City, Visakhapatnam

District.
3 The Station House Officer, Prohibiton and Excise,Visakhapatnam-II,

Visakhapatnam District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of

Mandamus declaring the impugned order of the 1st respondent in Rc.No. 1981/2004/C.1 dated 26-02-2005 and the action of the Respondents in closing the M/s. Well Cheerup Bar & Restaurant bearing D.No. 9-1-102, Resapuvanipalem, Visakhapatnam bearing I.L-17 (Bar) License No. 30/2004-05 on 26-02-2005 at 3.00 P.M. in pursuance of the impugned order as illegal, arbitrary, capricious voilative of principles of natural justice and suffering from inherent lack of jurisdiction and consequently to set-aside the impugned order

Counsel for the Petitioner: SMT.N.(P).ANJANA DEVI, SATYANARAYANA
Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court made the following order:

ORDER:

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Petitioners are joint owners of M/s. Well Cheer Up Bar and Restaurant situated at Door No.9-1-102, Resapuvanipalem, Visakhapatnam. The bar licence was granted on 05.02.2005 for the lease period from 05.02.2005 to 31.03.2005 for the Excise lease year 2004-05, which ends by 31.03.2005.

It is stated that the petitioners have paid the licence fee of Rs.2,21,670/- for obtaining the said I.L.17 (Bar) licence for the purpose of running bar and restaurant in their premises. They submit that their Bar and Restaurant is situated in a commercial locality of Visakhapatnma Municipal Corporation. In the report submitted by the Prohibition and Excise Inspector, Visakhapatnam-II to the Prohibition and Excise Superintendent, Visakhapatnam it is stated that there are no educational institutions, temples, churches and hospitals within 50 meters of the proposed premises. However, there is a Mosque registered with Wakf Board to the opposite side of the proposed premises and the distance from the mid-point of the entrance of the proposed Bar premises to the mid point of the gate of Mosque has come to 64 meters and therefore the location of the said premises is in accordance with Rule 29 (1) (ii) of Andhra Pradesh Indian Liquor and Foreign Liquor Rules, 1970. Admittedly, the licence obtained by the petitioners is a ‘on licence’ where liquor is permitted to be consumed.

Petitioners state in their affidavit that the Bar and Restaurant was opened on 14.02.2005 and it has been running as per the rules and norms. While the matter stood thus, some group of people belonging to Yaseen Masjid (Mosque) raised protest on 15.02.2005 after

prayers and the same was published in Hindu dated 21.02.2005 as news item. On seeing the said news item the petitioners submitted a report before the S.H.O, III Town Police Law and Order requesting him to take necessary steps for providing police aid to their Bar and Restaurant on 24.02.2005. But the police officials did not respond to their request. The said group of people belonging to the said Mosque again gathered in front of the bar on 25.02.2005 at 3.00 PM and raised protest at the bar and restaurant. Thereupon the police officials came to the spot and the petitioners explained the situation stating that their licence was issued by following rules and that there is no violation of any of the provisions of the Excise Act or Rules made thereunder and as per the required Rule I.L.17 licence is prohibited to be granted if the premises if situated within 50 meters from the Mosque but in the instant case the distance between the Mosque and the said bar is about 64 meters.

It is stated that on the very next day the District Collector and the District Magistrate, Visakhapatnam issued a notice dated 26.02.2005, which reads as follows:

"OFFICE OF THE COLLECTOR & DISTRICT MAGISTRATE, VISAKHAPATNAM

Present: Sri Praveen Prakash, I.A.S.,

Collector & District Magistrate, Visakhapatnam

Rc.No.1891/2004/C1. Dated:26.02.2005

NOTICE

Sub: Proh. & Excise Department – Visakhapatnam District – M/s. Well Cheer Up Bar & Restaurant, Resapuvanipalem, Visakhapatnam – Representations of Yaseen Masjid & Madarasa Welfare Association, Resapuvanipalem, Visakhapatnam – Requesting to close the Bar due to inconvenience to their religious prayers – On 25.02.205 they obstructed the traffic on the Road in front of the Bar – Notice issued to close the Bar & Restaurant – Reg.

Ref: 1. Representation of Yaseen Masjid & Madarasa Welfare Association,

Resapuvanipalem, Visakhapatnam dated 11.02.2005.

2. Telegram dated 22.02.2005 from Ahamadulla Khan, President,

Yaseen Masjid & Madarasa Welfare Association, Resapuvanipalem,

Visakhapatnam.

* * *

On 25.02.2005 at about 3.15 PM a crowd of Muslim people have obstructed the traffic on the Road in front of M/s. Well Cheer Up Bar & Restaurant bearing D.No.9-1-102, Resapuvanipalem, Visakhapatnam and created Law & Order problem and they wanted to close the Bar in the premises on the plea that the functioning of the Bar & Restaurant is causing inconvenience to their religious prayers in Yaseen Masjid opposite to the Bar & Restaurant though the licence of the Bar & Restaurant has been sanctioned as per Rules. The Deputy Commissioner of Police, Visakhapatnam City who visited the place to control the crowd has desired to close the Bar & Restaurant to preserve public peace and to avoid Law & Order problem.

In view of the above and in exercise of the powers conferred by Sub-Section (1) of Section 20 of A.P.Excise Act, 1968, the licencees of M/s.Well Cheer Up Bar & Restaurant, Resapuvanipalem, Visakhaptnam are directed to close the Bar & Restaurant with immediate effect for a period of 3 months for preservation of public peace and to avoid Law & Order problem in the area.

COLLECTOR & DISTRICT MAGISTRATE

VISAKHAPATNAM"

Petitioners question the said notice issued to them seeking writ of mandamus declaring the said notice and the action of the respondent in closing down the petitioners' Bar & Restaurant pursuant to the said notice as illegal and arbitrary and is violation of principles of natural justice.

The facts are not in dispute that, admittedly, a crowd of Muslim people have obstructed the traffic in front of the Bar and Restaurant on 25.02.2005 at 3.15 PM and, in fact, the petitioners have also submitted a report to the SHO, III Town Police Law & Order, one day before the incident i.e, 24.02.2005 stating that on 18.02.2005 about 100 members belonging to the Yaseen Masjid came in front of their Bar & Restaurant and made an Hartal by raising slogans against their bar. In the said report it is further stated that in the Hindu Newspaper dated 21.02.2005 a news item was published under the caption of "**Plea to shift the BAR**" and as per the said new item, the petitioners came to know that the members of the said Masjid and Madarasa Welfare Association were planning to conduct a protest rally on 25.02.2005 after the prayers and wherein the petitioners submitted that the said members have no right to demand for shifting of their business. Accordingly, they requested the police to take necessary action against them and give necessary police aid to the petitioners and their Bar & Restaurant.

Learned counsel appearing for the petitioners submits that the District Collector and the District Magistrate, Visakhapatnam has no power to effect the closure of the Bar & Restaurant for a period of three months for preservation of public peace and to avoid Law & Order problem without giving any notice to the petitioners, which is a clear violation of principles of natural justice.

The only question that arises for consideration as to whether the District Magistrate, is empowered to pass the impugned notice requiring the petitioners to close their Bar & Restaurant for a period of three months.

Section 20 of the Andhra Pradesh Excise Act, 1968 (for short 'the Act') reads as follows:

"**Closing of shops for preservation of public peace: -**

1. The District Magistrate may, by notice in writing to the licencee, require that any shop in which any intoxicant is sold shall be closed at such times or for such period as he may think necessary fro preservation of the public peace.
2. If any riot or any unlawful assembly is apprehended or occurs in the vicinity of any such shop, any Magistrate of first or second class may for reasons to be recorded in writing, require such shop to be kept closed for such reasonable period as he may think necessary.
3. The licencee shall not, on account of the closure of his shop under this section, be entitled to any compensation except to the refund of such licence fee paid by him in respect of the shop as is proportionate to the period which the shop is required to be kept closed under this section."

As per Section 20 of the Act the District Magistrate is empowered, by notice in writing to the licencee requiring him to close the shop in which liquor is sold at such times or for such period as he may think necessary for preservation of public peace.

Under Section 20 (2) of the Act if any unlawful assembly is apprehended or occurs in the vicinity of such shop, the Magistrate of First Class is also empowered to close such shop for such reasonable period as he may think necessary.

In the instant case, the Bar has been ordered to be closed under Section 20 (1) of the Act. Section 20 (1) does not contemplate any issuance of prior notice before requiring the licencee to close the shop where intoxicants are sold. A perusal of Section 20 of the Act goes to show that for preservation of the public peace, the District Magistrate, if he thinks necessary, he is entitled to order for such closure of shop at such times or for such period. Admittedly, in the instant case, not only an unlawful assembly is apprehended but, in fact, unlawful assembly was there in front of the petitioners' Bar and Restaurant.

In the instant case, the District Collector also recorded reasons for closing down the bar and restaurant stating that on 25.02.2005 a crowd of Muslim people have obstructed the traffic on the Road in front of the petitioners' Bar and Restaurant and created Law & Order problem and the crowd wanted to close the Bar in the premises on the plea that the functioning of the said Bar and Restaurant is causing inconvenience to their religious prayers in Yaseen Masjid situated opposite to the said Bar and Restaurant. The Deputy Commissioner of Police, who also visited the place to control the crowd and expressed his desire to close the Bar and Restaurant to preserve the public peace and to avoid Law & Order problem. Therefore, I am of the opinion that the impugned order not only satisfied the requirements of Section 20 (1) but under Section 20 (2) of the Act also sufficient reasons have been recorded requiring to close the said Bar and Restaurant.

No doubt, petitioners have obtained the licence after fulfilling all the formalities. A licence in form I.L.17 where liquor is sold has to be situated at a distance of 100 meters from the educational institutions, hospitals, temples, mosques etc. but in areas under the Municipal Corporations the said distance of 100 meters is restricted to 50 meters only. In the instance case, the distance between the Bar and Restaurant and the Mosque is 64 meters. However, I am of the opinion that merely because the petitioners' Bar and Restaurant is opened in conformity with the Excise Act and Rules made thereunder, it does not restrain the Collector & District Magistrate, to close down the said premises of the petitioners for preservation of the public peace and tranquility. It is the duty of the police and the District Magistrate to maintain Law & Order when there is a protest by huge crowd of Muslim community. I am of the view that in order to maintain Law & Order the police visited the premises of the petitioners and requested to close the said premises to preserve the public peace and to avoid Law & Order problem. Therefore, I do not see any illegality in

passing the said order by the first respondent. But the further question that arises for consideration is as to whether the District Magistrate is empowered to order to close the said Bar & Restaurant of the petitioners beyond the licence period, requires to be considered.

Admittedly, the period of the licence is only up to 31.03.2005 whereas the District Magistrate ordered to close the petitioners' Bar and Restaurant for a period of three months vide impugned order dated 26.02.2005, which goes beyond the licence period and which cannot be passed. Therefore, I am of the opinion that the said order directing the petitioners to close their premises for a period of three months i.e., beyond the validity period of the licence is illegal and unsustainable and which has to be restricted up to 31.03.2005 only. Therefore, the said period of closure of the petitioners' Bar and Restaurant is restricted up to 31.03.2005 only and which cannot be extended beyond validity period of the said licence.

Admittedly, the impugned notice has been passed under Section 20 (1) of the Act.

Learned counsel appearing for the petitioners contend that the respondents could have ordered to close the Bar and Restaurant on Friday only as the same being the holy day for Muslims, which attracts huge crowd to the Mosque, as the discretionary power is vested with the District Collector to order for the closure of the Bar and Restaurant at such times and for such period as he thinks necessary. But in the instant case, without considering the request of the petitioners to close their Bar and Restaurant only on Friday, the Collector has ordered to close the Bar and Restaurant for a period of three months i.e., beyond the period of validity of the licence.

Having regard to the facts and circumstances of the case, the writ petition is disposed of upholding the impugned notice issued by the first respondent to close the Bar and Restaurant, however, restricting the period of closure of the said Bar and Restaurant up to 31.03.2005 only, keeping it open for the petitioners to make a representation to the first respondent to close the said Bar and Restaurant only on Friday and on receipt of such representation, it is open for the respondents to consider the same and pass appropriate orders in accordance with law. No costs.

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V. ESWARAIAH, J

March 25, 2005

Dsk

Note: Furnish Copy By Monday i.e., 28.03.2005

(B/o)

Dsk

To

1 The District Collector & District Magistrate, Visakhapatnam, Visakhapatnam District.

2 The Deputy Commissioner of Police, Visakhapatnam City, Visakhapatnam District.

3 The Station House Officer, Prohibition and Excise, Visakhapatnam-II, Visakhapatnam District.

4 Two CCs to GP For Prohibition & Excise, High Court Buildings, Hyderabad

(OUT)

5 Two CD Copies.